



## Ecuador

### Country Reports on Human Rights Practices - [2002](#)

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Ecuador is a constitutional republic with a 100-member unicameral legislature that was chosen in free and fair elections in October 2002. The National Congress is composed of four major parties, six minor parties, and three independents spanning the spectrum from center-right to extreme left. In November Lucio Gutierrez was elected President and will assume office on January 15, 2003, succeeding Gustavo Noboa. The judiciary is constitutionally independent but in practice was inefficient and susceptible to outside pressure.

While the civilian authorities generally maintained effective control of the security forces, the military enjoyed substantial autonomy, which was reinforced by revenues generated from civil aviation, shipping, and other commercial sectors. The civilian Ministry of Government is in charge of the National Police, which is responsible for domestic law enforcement and maintenance of internal order. In February President Noboa declared a state of emergency in Sucumbios and Orellana Provinces due to local anti-government protests; this gave him the authority to use troops to monitor and react to public protests. Throughout the year, the military continued to supplement the police on an ad hoc basis. Some police and members of the military continued to commit human rights abuses.

The economy, which is in the third year of recovery from a severe economic recession, is based on private enterprise, although there continues to be significant government involvement in key sectors such as petroleum, utilities, and aviation. The country's population is estimated at 12.2 million. The principal exports are oil, bananas, shrimp, and cut flowers, which, together with emigrant remittances and tourism, are the country's leading sources of foreign income. Most citizens were employed in the urban informal sector or as rural agricultural workers; rural poverty was extensive, underemployment was high, and there was severe maldistribution of income. A U.N. Development Program report estimated that 71 percent of the citizens lived in poverty in 2001 of whom 30 percent were indigent, with an almost total lack of resources. Annual inflation was approximately 9.4 percent.

The Government's human rights record remained poor; although there were some improvements in a few areas, serious problems remain. There were credible reports that police, security forces, and semiofficial entities committed killings using unwarranted lethal force. Security forces killed three persons during demonstrations; however, the number of killings during demonstrations declined from 2001 levels, and members of the security forces also faced prosecution and prison sentences for some violations. Police tortured and otherwise mistreated prisoners and detainees. Prison conditions remained poor. Persons often were subject to arbitrary arrest, and prolonged detention was a problem. Once incarcerated, persons without lawyers may wait up to 1 year before being tried or released. Nearly one-half of the detainees in jail have not been sentenced formally. The Government prosecuted a few human rights abusers; however, in most cases there was no prosecution or punishment. The judiciary was politicized, inefficient, and sometimes corrupt, which undermined the rule of law. There was some self-censorship in the media. Between June and August, unknown assailants broke into the offices of three human rights organizations and searched their files and computers. The police used tear gas and other methods to quell protesters. Violence and pervasive discrimination against women, indigenous people, and Afro-Ecuadorians remained problems. Child labor remained a problem. Mob violence and vigilante killings persisted. Ecuador was invited by the Community of Democracies' (CD) Convening Group to attend the November 2002 second CD Ministerial Meeting in Seoul, Republic of Korea, as a participant.

## RESPECT FOR HUMAN RIGHTS

### Section 1 Respect for the Integrity of the Person, Including Freedom From:

#### a. Arbitrary or Unlawful Deprivation of Life

There were no confirmed reports of politically motivated killings; however, there continued to be credible reports that police, security forces, and semiofficial entities such as neighborhood brigades used excessive force and committed killings. (Neighborhood brigades or "juntas" are civic defense groups organized by the National Police to provide an anticrime presence

in neighborhoods. Their members were not authorized to carry firearms but often did.) Through November the Ecumenical Committee for Human Rights (CEDHU) reported 23 killings by security forces, compared with 62 killings during all of 2001. In some instances, there was insufficient evidence to reach a conclusion as to what occurred; however, the killings sometimes exhibited a suspicious pattern.

Three bodies were discovered along the highway around Guayaquil during the first 9 months of the year, compared with 26 bodies discovered along the highway in 2001. Some human rights groups allege that the Intervention and Rescue Group (GIR) police or the semi-autonomous Guayas Transit Commission police (CTG) (operating under the Mayor's anticrime plan Mas Seguridad) were involved in these killings; others asserted that criminals were responsible. In almost all of these cases over the past 2 years, government agencies did not investigate. However, there was a police investigation in the case of David Delgado and Carlos Lara, whose bodies were found along the highway around Guayaquil on January 1. The bodies showed evidence of torture and bullet wounds. A neighbor claimed to have seen six men dressed in GIR uniforms take the two victims away in a car on December 29, 2001. Five police officers were indicted in the case; as of December, the case remained pending in the police court system.

Security forces killed three persons during demonstrations (see Sections 1.c. and 2.b.). On January 11, during national protests against the Government's increase in the price of fuel, police in the city of Cuenca shot and killed 16-year-old student Damian Pena. As of December, the case remained under investigation by the prosecutor's office. At the time of the killing, students had been throwing stones at the police, and the police had fired tear gas at the protesters. On February 24, during protests in Sucumbios and Orellana Provinces, a house in Lago Agria was destroyed when gas tanks inside the house exploded. When police arrived at the scene, they shot and killed 26-year-old Marcelo Zambrano, who was unarmed. Bystanders said the police shot Zambrano because he was slow to comply with an order to lie down on the ground. As of December, one policeman was under investigation for the killing, and no final decision had been made by the police court system. There were reports that a second person, Luis Guerra Pachacama, was shot and killed by security forces during the protests in Orellana. One witness said that members of the military, who had fired tear gas and bullets at demonstrators, shot Pachacama. As of December, the investigation into the death of Pachacama appeared to be stalled, and no further details in the case were known.

On March 24, in the town of Puyo, a policeman shot and killed Congressman Eduardo Vasconez. According to bystanders, at 3:30 a.m. Vasconez and policeman Fausto Bosques Cajas came to blows in an argument, and Bosques fired one shot at Vasconez. The cause of the argument was unclear, but apparently it started after Bosques had stopped some youths. Bosques was charged in the case, but as of December, no verdict had been reached.

In June Rodrigo Ron died in prison under suspicious circumstances (see Section 1.c.).

On July 1, police in Sucumbios detained taxi driver Klever Abad for transporting a type of fuel that is used in processing cocaine. According to police, Abad threw himself into a river to avoid arrest. His body was found several days later, 24 miles from the bridge, with apparent gunshot wounds. After an investigation, a policeman was charged in the case; however, as of December, the case remained in the police court system.

In the case of the February 2001 killing of Joffre Aroca, policeman Carlos Rivera spent more than a year in prison without being sentenced. Rivera escaped from prison in April but was captured and—after returning to prison—was sentenced to 8 years in prison for the murder of Aroca. Rivera appealed his sentence and was released from prison at the end of April, since he had already served more than a year in prison.

In August 2001, 22-year-old lieutenant Julio Robles died during a military hazing event known as a "baptism," which took place at the B1-21 Infantry Battalion in Macara. As of December, the case against three members of the army remained in the military courts without a final resolution. In December President Noboa decreed that the three defendants be discharged from the military.

In March a court sentenced five policemen to 12 years in prison for the murder of Pedro and Carlos Jaramillo, and the attempted murder of Pedro Baque, in 1999. Baque survived eight gunshots and testified against the policemen. The court released three other policemen Baque implicated in the attack.

Six policemen were sentenced to 8 years imprisonment in September for the December 2000 murders of Pedro and German Akintua. The policemen killed the father and son, members of the Shuar indigenous community, during an altercation. The policemen's appeal of the decision remained pending at year's end.

Three individuals (not members of government security forces) were arrested for the 1999 killings of Jaime Hurtado Gonzalez, a member of Congress from the far-left Popular Democratic Movement party, and two associates. The three were released after spending 1 year in jail. In November the prosecutor for the case completed an investigation of the case, but at year's end the judge had not decided whether to try the three suspects.

There were cases of mob violence that resulted in lynching and burning of suspected criminals (see Section 1.e.). Mobs or vigilante groups killed 11 crime suspects in the first 9 months of the year; individual lynching continued to occur in all parts of the country, especially in indigenous communities in remote areas of the highlands. For example, on January 27, in the Cuendina neighborhood south of Quito, 3 men were accused of robbing a bakery. Hundreds of residents assembled, seized the

men, beat them, and burned them alive. On July 13, police in Santa Rosa arrested Franklin Pauta for murder. Police attempted to move him to a different town; however, residents blocked the highway. The police returned to the police station, where an estimated 3,500 residents surrounded them, threw Puata off the second floor, and shot him. As of December, there were no reports of arrests in either case.

In 2001 an indigenous group, known as "Los Justicieros," was accused of implementing vigilante justice. In July 8 members of this group were sentenced to 8 years in prison for kidnaping a judge.

There was no update in the case against vigilantes for the March 2001 murder of Patterson Manzano. The case remained stalled in the court system.

#### b. Disappearance

There were no reports of politically motivated disappearances and no disappearances attributed to the police.

Nine policemen and one civilian were convicted for the November 2001 murders of Elias Elint Lopez Pita and Luis Alberto Shinin Lazo: Five for premeditated homicide, two as accomplices, and three as accessories after the fact.

Criminal kidnaping for profit continued to be a problem in the northern regions that border on Colombia. There were reports of extortions and threats of kidnaping of ranchers, farmers, and businessmen. There were no reliable estimates of the number of such extortions or kidnappings—often attributed to Colombian armed gangs—since many victims did not report the crimes for fear of retribution.

#### c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture and similar forms of intimidation and punishment; however, the police continued to torture and abuse suspects and prisoners, usually with impunity.

The CEDHU published detailed reports on suspects who reported being tortured by specific police officers. Through November it had registered 23 cases of torture involving 64 victims and had noted complaints of "physical aggression" by police or security forces against a total of 312 persons. The Permanent Committee for the Defense of Human Rights (CDH) reported 10 cases of torture by police and 70 cases of torture by prison guards between January and September in Guayas Province alone. In most cases, the police appeared to have abused such persons during investigations of ordinary street crime. The victims reported that the police beat them, burned them with cigarettes, applied electric shocks, or threatened them. In May five persons testified that police in the city of Cuenca submerged them in freezing water until they confessed to committing crimes. A special commission was formed to investigate the accusations, and as of December, four policemen were under investigation.

In June Rodrigo Ron, former police superintendent for the province of Pichincha, died in prison under suspicious circumstances. According to the authorities, he died after he fell in his cell. However, an autopsy detailed bruises on many parts of his body, broken ribs, and a 2-inch cut in the back of his head. Ron had been accused of being the leader of a band of car thieves. After the press revealed inconsistencies between the initial story and the autopsy, prison authorities began an investigation. By year's end, the case was under investigation by a prosecutor, but no charges had been filed.

No action was taken in the February 2001 case of the alleged torture of warehouse clerk Jose Ramires by members of the National Police and the Air Force Combat Command in Guayaquil, and none appeared likely.

There were complaints that security forces used excessive force during demonstrations and that protesters were beaten while in detention. (see Sections 1.a. and 2.b.).

Police corruption was also a problem. Charges were dropped in April against former Guayas Police Chief and Intelligence Director General Abraham Correa for drug trafficking in the case against drug trafficker Carlos Hong. Correa frequently had visited Hong's residence and business and had intervened to free Hong's wife when she was arrested. One of Correa's subordinates still faced charges in the case. A total of 150 police officers were fired in 2001 for infractions related to human rights violations or corruption.

There was no activity in the cases of police officer Freddy Veloz and off-duty corporal Miguel Noriega who in 2000 had been accused, respectively, of rape and of shooting and wounding another person.

Unknown parties set off 14 small bombs during the year. On September 25, pamphlet bombs exploded in Guayaquil at the headquarters of the Social Christian Party and at a branch office of Ecuador's largest bank. One individual was injured. Pamphlets left at both sites said that the "Revolutionary Militia of the People" was responsible.

Conditions in prisons and detention centers generally were poor and tended to be worse in the tropical coastal areas than in the temperate highlands. Overcrowding was a chronic problem elsewhere. According to the National Judiciary Board, in September

there were 9,641 inmates incarcerated in facilities originally designed to hold 6,571 prisoners. In Manabi Province, where 3 prisons were built to hold 390 prisoners, there were 620 inmates in September. Prison authorities routinely investigated deaths in custody. During the year, a number of prisons experienced serious outbreaks of disease, including meningitis. In 2001 Congress increased the penalties for serious offenses in an attempt to curb rising crime. Prison officials feared the measures would exacerbate overcrowding, but overcrowding did not increase significantly. Pretrial detainees are not held separately from convicted prisoners. There are no separate facilities for repeat offenders or dangerous criminals, nor are there effective rehabilitation programs. Construction of new prisons was underway. During the year, the daily amount allocated for prison rations increased from 70 cents to 75 cents per inmate.

The Constitution requires that prisoners charged with lesser offenses (those carrying a maximum sentence of 5 years or less) and who have been detained for more than 1 year without a trial obtain their freedom immediately. By August approximately 2,420 inmates had been released under this law since it went into force in 1999.

Inmates in a number of prisons protested against a proposed change to sentencing guidelines. Inmates sentenced for a number of less serious crimes routinely serve only half their sentence. The proposed change would have mandated increased jail time for these prisoners. In February prisoners began protests, including hunger strikes, and in May inmates in a Quito prison held approximately 300 visitors hostage. The proposal was dropped by the Attorney General on May 30, and the prisoners' protests ended.

At year's end, women constituted 9 percent of the total prison population. Women were held separately from men, and conditions were notably better in the women's prison in Quito than in other facilities. There also were separate facilities for juveniles. Children in these facilities often faced abuse.

The Government permitted prison visits by independent human rights observers. The National Police Directorate Specializing in Children (DINAPEN) served as a monitoring group for preventing abuse in prisons.

#### d. Arbitrary Arrest, Detention, or Exile

The Constitution and the Penal Code provide that no person may be deprived of liberty without a written order from a governmental authority; however, the authorities often violated these legal protections in practice, and arbitrary arrest and detention remained problems. The law requires the authorities to issue specific written arrest orders within 24 hours of detention—even in cases in which a suspect is caught committing a crime—and the authorities must charge the suspect with a specific criminal offense within 48 hours of arrest. All detained persons may challenge the legality of their detention by petition within 48 hours of their arrest, but in practice few such petitions were brought forward. The senior elected official (usually the mayor) of the locality in which the suspect is held reviews any such petitions. Regardless of the legality of a detention, a prisoner may be released only by court order. In some cases, detainees who are unaware of this, or who do not have the funds to hire a lawyer, may remain in prison for an extended period of time before being released. Bail generally is not available, and the law prohibits it in cases of narcotics and major offenses (i.e., offenses that "affect or put at risk" the public, punishable by 3 to 35 years imprisonment).

Although the law prohibits incommunicado detention, human rights organizations continued to report occasional cases of this practice. Even when the police obtain a written arrest order, those charged with determining the validity of detention often allowed frivolous charges to be brought, either because they were overworked or because the accuser bribed them. The system frequently was used as a means of harassment in civil cases in which one party sought to have the other arrested on criminal charges. Investigative detention up to and including trial is legal if a judge determines that it is necessary and if evidence that a crime has been committed is presented. The new Criminal Procedures Code limits immediate detention to 48 hours for suspicion of committing a crime and establishes preventive detention of 6 months for minor offenses and 12 months for major offenses once trial has begun.

There were mass arrests during protests in January and February (see Sections 1.a. and 2.b.). During the January protests, according to Amnesty International, police detained over 200 protesters some of whom reported being beaten during their detention. The authorities arrested approximately 100 persons during the state of emergency in Sucumbios and Orellana Provinces in February and early March. Most were released in early March.

The Constitution prohibits forced exile, and the Government does not use it.

#### e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary; however, in practice the judiciary was susceptible to outside pressure and corruption. Despite continuing efforts to depoliticize and modernize the court system, the judiciary continued to operate slowly and inconsistently. Judges reportedly rendered decisions more quickly or more slowly as a result of political pressure, or in some cases, the payment of bribes. A 2001 survey by the Latin American Corporation for Development revealed that 54 percent of judges believed that other judges were corrupt. There were lengthy delays before most cases came to trial.

The judiciary is composed of the Supreme Court, superior circuit courts, other courts and tribunals that hear cases in accordance with the Constitution and other laws, and the Judicature Council, which is charged with administering the court

system and disciplining judges. There also are military and police tribunals that have the same status as circuit courts, while criminal, provincial, and cantonal (county) courts serve as courts of first instance.

The regular court system tries most nonmilitary defendants, although some indigenous groups try members independently for violations of tribal rules. The law permits police or military courts to try police officers and military defendants in closed sessions, in accordance with the respective military and police court martial manuals. Only the Supreme Court may try cases involving flag-rank officers. The police court does not announce verdicts or punishments, reinforcing the strong impression that the police are immune from prosecution. The 1998 Constitution places both police and military justice under the control of the Supreme Court. However, the three systems have not yet been integrated, although weak efforts to do so continued.

The Supreme Court that took office in 1997 publicly recognized the shortcomings of the judicial system and pledged to improve the quality and training of judges. In 1998 the Supreme Court supervised the selection by open competition of all appellate judges. Between January and September, the Judicature Council that took office in 1998 received 891 complaints against various judges. Thirty judges were dismissed from their posts during the year. There are over 55,000 laws and regulations in force. Many of these are conflicting, and judges have been known to pick and choose from archaic legislation in an arbitrary or capricious manner. The resulting lack of clear rules contributes to what widely is referred to as "juridical uncertainty."

The failures of the justice system contributed to a growing number of cases in which communities took the law into their own hands. Lynching and burnings of suspected criminals by citizens and quasi-official groups continued (see Section 1.a.). These occurred particularly in indigenous communities and poor neighborhoods of major cities, where there is little police presence.

The law provides for due process rights for criminal defendants, but the authorities, including the Chief Prosecutor's office, often did not observe these rights in practice. By law the accused is presumed innocent until proven guilty, and defendants have the right to a public trial, defense attorneys, and appeal. They may present evidence, refuse to testify against themselves, and confront and cross-examine witnesses. Although a public defender system exists, in practice there are almost no attorneys available to defend the large number of impoverished suspects.

Trial is supposed to begin within 15 to 60 days of the initial arrest; however, in practice initiation of the trial phase can take years. Nearly half of all incarcerated persons had not been tried and sentenced. Accused narcotics traffickers and suspects in major crimes cannot obtain bail or be released on their own recognizance.

In July 2001, a new Criminal Procedures Code went into effect and fundamentally changed the criminal justice system from an inquisitorial system to an accusatorial system. Under the new system, the Chief Prosecutor's office is to investigate and prosecute crimes, while the role of judges is to become neutral arbiters presiding over oral trials. Previously, judges and their staffs investigated crimes with the help of the police while the public prosecutors ("fiscales") monitored the judges' progress. Under the new system, prosecutors have wide discretion in deciding which cases can proceed. The judiciary now hears criminal cases in oral trials, compared with the previous slow, predominantly written inquisitorial system. The National Police continued to work as investigators, but now are under the direction of the prosecutors. There are no juries in the justice system. The new code is intended to strengthen the justice system by improving due process and enhancing the rights of the accused through measures such as habeas corpus and limits on preventive detention (see Section 1.d.). In December the Government authorized the formation of an organizing committee to coordinate implementation of the abrupt change in roles, functioning, and procedures for the criminal justice system. The supplies and training available remained inadequate to meet the newly expanded role of the prosecutor's office.

The 1998 Constitution also explicitly recognizes the indigenous communities' right to exercise their own system of justice, based on their traditions and customs. However, the law does not yet specify how this is to work in practice. This parallel system has raised questions of both jurisdiction and conformity to the right to a fair trial.

There were no reports of political prisoners.

#### f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such practices, government authorities generally respected these prohibitions, and violations were subject to effective legal sanctions. Wiretapping by the national police to investigate crimes is legal with a court order. However, members of the police did conduct wiretapping that is not officially sanctioned, in part due to a lack of specific procedural guidance.

### Section 2 Respect for Civil Liberties, Including:

#### a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press, and the Government generally respected these provisions in practice; however, there were some significant exceptions.

Individuals criticized the Government publicly and privately without fear of reprisal. There is a free and vigorous press.

Ownership of the media is broadly based, and editorials represented a wide range of political views and often criticized the Government. However, some degree of self-censorship in the print media occurred, particularly with respect to politically sensitive issues or stories about the military and its related industries. Self-censorship appeared to have operated in the media coverage of the labor dispute on a banana plantation owned by wealthy businessman and presidential candidate Alvaro Noboa (see Section 6.b.). This dispute received little coverage in the national media, despite Noboa's economic and political prominence. In addition, most elements of the media were influenced by economic considerations and tended to reflect the narrow, regional interests of their owners.

All of the major media organs—newspapers, radio, and television—are locally and privately owned, except for one government-owned national radio station. The law limits foreign investment in broadcast media. Using a law promulgated by the last military regime that requires the media to give the Government free space or broadcast time, the Government may and did require television and radio to broadcast programs produced by the Government featuring the President and other top administration officials.

According to the Inter-American Press Association, during the state of emergency that occurred in Sucumbios and Orellana Provinces in February (see Sections 1.a. and 2.b.), the Government ordered four radio stations to stop broadcasting anything other than music for 3 days, in the interest of public security.

The Government did not restrict academic freedom.

#### b. Freedom of Peaceful Assembly and Association

The Constitution provides for the right of free assembly for peaceful purposes, and the Government generally respected this right in practice; however, there were some limits, and security forces used force to quell some demonstrations, resulting in deaths and injuries (see Sections 1.a. and 1.c.). Public rallies require prior government permits, which generally were granted, although exceptions occurred.

In January there were significant protests around the country against an increase in fuel prices (see Sections 1.a. and 1.d.). Police used tear gas, detained approximately 200 protesters, killed one person; at least 9 others suffered mostly minor injuries. In February and March, demonstrators blocked roads, and disrupted business in the Amazonian provinces of Sucumbios and Orellana (see Sections 1.a. and 1.d.). Police and military forces again used tear gas, killed 2 persons, injured several others, and arrested approximately 100 demonstrators. There was no official review of the level of force used to restore order. In the cases of the killings, there was no indication that the demonstrators posed a serious threat to the police.

Numerous other labor and student demonstrations took place without major incident in the capital and the outlying regions during the year. Protesters often blocked roads (see Section 2.d.). In general the security forces intervened in demonstrations only when there was violence against bystanders or destruction of property.

The Constitution provides for freedom of association, and the Government generally respected this right in practice.

#### c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice. The Government does not require religious groups to be licensed or registered unless they form non-governmental organizations (NGOs) that engage in commercial activity. The overwhelming majority of the population consider themselves to be Roman Catholic, although many citizens either did not regularly practice the religion or followed a syncretistic version that combines indigenous beliefs with orthodox Catholic doctrine. The Government allowed missionary activity and religious demonstrations by all religions. The Government did not permit religious instruction in public schools; private schools are permitted to teach religion, as are parents in the home. There are no restrictions on publishing religious materials in any language.

For a more detailed discussion see the 2002 International Religious Freedom Report.

#### d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government generally respected them in practice; however, frequent military and police roadblocks often presented problems for travelers using public transportation, especially at night. Protesters often blocked roads (see Section 2.b.). The Government requires all citizens to obtain exit visas when traveling abroad, which are granted routinely. Military and minor applicants must comply with special requirements.

The law provides for granting refugee and asylee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. The Government cooperated with the U.N. High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees. The issue of provision of first asylum did not arise during the year. There were no reports of the forced return of persons to a country where they feared persecution.

The Foreign Ministry reported that for the year there were 6,270 applications for refugee status. Since January 2000, a total of 10,958 individuals had applied, and at year's end, 5,595 applicants awaited determination of their status. During the year, the authorities denied 1,365 applications and granted 1,713. Approximately 99 percent of these refugees and applicants were Colombians; according to the UNHCR, the majority of displaced Colombians were impoverished peasants fleeing fighting, but some were adolescents escaping forced recruitment by illegal armed groups in Narino and Caqueta. Most displaced persons still came from Putumayo and transited Sucumbios, Quito, and Tulcan to return home. The Government and the UNHCR developed a plan to cope with a potential refugee influx into Sucumbios Province of up to 10,000 persons.

### Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercise this right in practice through periodic, free, and fair elections held on the basis of universal suffrage. In October a new Congress was elected, and in November voters selected Lucio Gutierrez in the second round presidential election. Election observers from the Organization of American States, the European Union, and the Ecuadorian NGO Citizen Participation termed the elections peaceful, free, and fair. President-elect Gutierrez will assume office on January 15, 2003, succeeding Gustavo Noboa. The President's term is 4 years, and the President may not serve consecutive terms.

Deputies are elected to Congress for 4-year terms. Several parties were represented in the 100-member Congress, and no one party dominated. The Social Christian Party had the most seats (26). There were also three other major parties and six smaller parties represented in Congress. Eighteen members of Congress ran on an alliance of two or more parties.

Voting is mandatory for literate citizens over 18 years of age and voluntary for illiterate citizens. The law does not permit active duty members of the military to vote. The Constitution bars members of the clergy and active duty military personnel from election to Congress, the presidency, or the vice presidency. The Constitution provides that if a political party fails to garner a minimum of 5 percent of the votes in two open elections, the party must be eliminated from the electoral registry. Twelve parties were registered.

No specific laws prevent women or minorities from attaining leadership positions in government. President-elect Gutierrez won the election in alliance with Pachakutik, the largest indigenous political party. However, few women, indigenous people, or Afro-Ecuadorians occupied senior positions in government. A 1998 law requires that in 2000 at least 30 percent of the candidates for Congress and some local positions be women, and that in each subsequent election an additional 5 percent of the candidates be women (for example, 35 percent in 2002), until 2008 when 50 percent of the candidates are to be women. Women held 17 of 100 seats in Congress, the largest proportion in the country's history. President-elect Gutierrez named four female cabinet ministers, including the first female Minister of Foreign Affairs.

The indigenous movement, which previously shunned politics, formed the electoral movement "Pachakutik" and has run candidates for national, provincial, and local office in all elections since 1996. In November's elections, Pachakutik formed an alliance with President-elect Gutierrez. Pachakutik has five members in Congress, and an additional nine members of Congress ran on an alliance ticket that included Pachakutik. Pachakutik is associated closely with the politically active Confederation of Ecuadorian Indian Nationalities (CONAIE). Indigenous members of the National Constituent Assembly and their supporters won important constitutional protections for indigenous rights in the 1998 Constitution. President-elect Gutierrez named two indigenous cabinet members.

### Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups operated without restriction, investigating and publishing their findings on human rights cases. Domestic human rights groups, such as the CEDHU and the regional Latin American Human Rights Association (ALDHU), were outspoken in their criticism of the Government's record on specific cases. The Government has contracted with the ALDHU to provide mandatory human rights training to the military and the police.

The offices of three human rights groups were broken into between June and August. The nature of the break-ins indicated that these were not simple robberies. Files were opened, laptop computers were turned on but not stolen, and in one case a computer hard drive was stolen. The police investigations appeared to be superficial and no arrests were made.

In September during a press conference in Quito, a visiting senior U.N. official publicly questioned President Noboa's grasp of human rights following Noboa's August criticisms of "some" human rights groups for "protecting criminals" and "threatening national security."

The office of the Ombudsman ("Defensor del Pueblo") was created in 1998 to ensure ongoing attention to human rights problems; however, some observers criticized its lack of independence in practice. In 2000 Congress removed the Ombudsman from office on charges of fraud for acts that he committed while he was acting Attorney General, and Congress has not named a permanent replacement. Claudio Mueckay continued as acting Ombudsman at year's end. In November the office of the Ombudsman completed a new procedures manual that will be used to ensure that the procedures of all local ombudsman offices throughout the country are uniform.

In 1998 the Government decreed an ambitious National Human Rights Plan with the goal of preventing, penalizing, and eradicating human rights violations in the country. The three branches of government, as well as the independent Ombudsmen's office and a number of NGOs contributed to development of this plan, and the U.N. contributed funds to support it. The Government continued to implement various aspects of the plan, including training of the Congress on human rights matters, seminars, publication of documents, and a contingency plan for refugees. In October several prominent human rights NGOs publicly criticized the Government's lack of progress in implementing the plan. In December the Government released its "Human Rights Operative Plan" which described possible mechanisms for implementing the National Human Rights Plan.

#### Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status

The Constitution prohibits discrimination based on race, sex, or social status. In addition, the 1998 constitutional reforms explicitly increased the rights of women, children, and minorities, and required Congress to pass legislation implementing these rights promptly. Congress has been only partially successful in carrying out this mandate. Women, indigenous people, and Afro-Ecuadorians continued to face significant discrimination.

##### Women

Although the law prohibits violence against women, including within marriage, abuses were widespread. The Law Against Violence Affecting Women and Children criminalized spousal abuse, including physical, sexual, and psychological abuse; created family courts; and reformed the Penal Code to give courts the power to remove an abusive spouse from the home. The law also gives legal support to the Government's Women's Bureau in cases of sexual harassment in the workplace. The Office of Gender, in the Ministry of Government, reported 50,794 cases of sexual, psychological, or physical mistreatment of women in 2000. Women may file complaints against a rapist or an abusive spouse or companion only if they produce a witness. Some communities have established their own centers for counseling and legal support of abused women. The Government addressed such problems through its Women's Bureau; however, although the Bureau can accept complaints about abuse of women, it has no authority to act on the complaints but refers cases to the prosecutor's office. The Women's Bureau has projects in all provinces.

Many rapes were not reported due to the victims' reluctance to confront the perpetrators. The penalty for rape is up to 25 years in prison. In cases of statutory rape involving "amorous" sex with a minor, if the rapist marries the victim the charges against him, or anyone else who took part in the rape, cannot be pursued unless the marriage subsequently is annulled. In 2001 Congress increased the penalty for rape where death occurred to 35 years in prison.

Sexual harassment in the workplace was common. Typical cases of sexual harassment reported in the press involved instances where a supervisor solicited sexual favors from an employee.

Regulated adult prostitution is legal so long as the businesses are registered with the Government and follow health regulations.

Discrimination against women is pervasive in society, particularly with respect to educational and economic opportunities for those in the lower economic strata. The increasingly active women's movement alleged that culture and tradition inhibited achievement of full equality for women. There were fewer women than men employed in professional work and skilled trades, and pay discrimination against women was common.

The Ecuadorian Women's Permanent National Forum included more than 320 women's organizations and promoted social, economic, and cultural change through various methods, including increasing political participation by women. In addition, the National Women's Council provides support for approximately 500 women's organizations, many of which promoted social consciousness and greater participation by women in the political process. The Women's Political Coordinator, an NGO that operated in 22 provinces, promoted similar themes relating to women's rights, with emphases on political participation and human rights. It also focused on young women and Afro-Ecuadorian women.

##### Children

The Government did not take effective steps to provide for the welfare of children. The Constitution requires that children achieve "a basic level of education," estimated at 9 years of school; however, due to the lack of schools in many rural communities, the Government's failure to provide adequate resources, and the economic needs of families, the Government rarely enforced this requirement in practice. The National Statistics Institute reported in 2001 that 1 out of 6 citizens between the ages of 13 and 20 had not completed the sixth grade. Education is free. The Constitution provides that 30 percent of the public budget must be devoted to education; however, in practice only half of that amount was spent. The Government has programs in 18 urban areas that provide families with educational subsidies as an incentive to keep children in school. In rural areas, many children attend school only sporadically after 10 years of age to able to contribute to household income as farm laborers (see Section 6.d.).

There is no societal pattern of abuse against children.

Child prostitution was a problem (see Section 6.f.)



Government resources to assist children traditionally have been limited. Approximately 61 percent of children under the age of 5 years are malnourished. After declining in previous years, it appeared that Government spending on education slightly increased during the year.

More than 20 NGOs promoted child welfare. Several private organizations were very active in programs to assist street children, and UNICEF also ran a program in conjunction with the Central Bank. The children of the poor often experienced severe hardships, especially in urban areas.

#### Persons with Disabilities

There was no official discrimination against persons with disabilities in employment, education, or the provision of other state services. The Constitution recognizes the rights of persons with disabilities. In April 2001, Congress passed legislation to promote the rights of persons with disabilities, including access to education, employment, transportation, and communication. However, the Government has few resources to ensure access to these services in practice. In September the U.N. awarded the country the Franklin Delano Roosevelt International Disability Award in recognition of its creation of a national council and a national plan for persons with disabilities.

#### Indigenous People

While at least 85 percent of all citizens claim some indigenous heritage, those who maintain their indigenous cultural identity and live in indigenous communities comprise between 15 and 20 percent of the total population. The vast majority of indigenous citizens reside in rural areas, including the highlands and the Amazonian provinces, and most live in varying degrees of poverty. A 2000 government study found that 79 percent of indigenous children lived under the poverty line. Land is scarce in the more heavily populated highland areas, where high infant mortality, malnutrition, and epidemic disease were common. Electricity and potable water often were unavailable. Although the rural education system was seriously deficient, many indigenous groups participated actively with the Ministry of Education in the development of the bilingual education program used in rural public schools.

The Constitution recognizes the rights of indigenous communities to hold property communally, to administer traditional community justice in certain cases, and to be consulted before natural resources are exploited in community territories. Indigenous people also have the same civil and political rights as other citizens. In the Amazon area, indigenous groups have lobbied the Government, enlisted the help of foreign and domestic NGOs, and mounted protests (including kidnapping oil workers in December) in their attempts to win a share of oil revenues and a voice in exploitation and development decisions. The Constitution expressly recognizes the indigenous communities' right to be consulted on, but not the right to approve, oil exploration and development. The communities tended to be consulted on such matters, although their wishes were not always met. Oil companies increased their efforts to minimize the environmental and social impact of their oil projects in the Amazon but continued to face criticism from indigenous groups that environmental damage continued.

Despite their growing political influence and the efforts of grassroots community groups, which were increasingly successful in pressuring the Government to assist them, indigenous people continued to suffer discrimination at many levels of society. With few exceptions, indigenous people were at the lowest end of the socioeconomic scale.

Following protests in January and February 2001, the three main indigenous groups—CONAIE, the Federation of Indigenous and Black Peasants of Ecuador (FENOCIN), and the Federation of Evangelical Indigenous of Ecuador (FEINE)—tabled 23 topics for discussion with the Government, including the claims by indigenous groups for indemnities over lives lost during the protests. After President-elect Gutierrez won in alliance with the mostly indigenous political party Pachakutik, the talks were discontinued.

CONAIE was at the forefront of protests in 2000 that toppled President Mahuad. CONAIE also attempted to arrange a popular referendum and engaged in public demonstrations to protest government economic austerity measures and to urge the repeal of economic modernization laws involving privatization of state-owned enterprises.

#### National/Racial/Ethnic Minorities

The population of the rural, northern coastal area includes large numbers of Afro-Ecuadorian citizens. They suffered widespread poverty and pervasive discrimination, particularly with regard to educational and economic opportunity. There were no special government efforts to address these problems.

Five major Afro-Ecuadorian organizations were active in the country; the largest was the National Afro-Ecuadorian Confederation, with headquarters in Quito. It estimated that Afro-Ecuadorians accounted for more than one million persons, or approximately 9 percent of the total population. While the presence of Afro-Ecuadorians has grown in the fields of sports and culture, their educational opportunities continued to be limited.

The press has focused on lingering racism among all strata of society. Afro-Ecuadorian organizations noted that despite the absence of official discrimination, societal discrimination, including stereotyping, continued to affect them. For example, they

asserted that the police stop Afro-Ecuadorians for document checks more frequently than they stop other citizens.

## Section 6 Worker Rights

### a. The Right of Association

The Constitution and Labor Code provide most workers with the right to form trade unions. The labor code does not explicitly prohibit employers from interfering in the establishment or functioning of worker organizations; however the labor code explicitly prohibits employers from dismissing workers while they are forming a union or negotiating a collective contract, although the penalties for violations are relatively minor. Members of the police and the military and public sector employees in nonrevenue producing entities are not free to form trade unions. The 1991 Labor Code reforms sets the number of workers required for an establishment to be unionized at 30, which the International Labor Organization's Committee on Freedom of Association considers too stringent a limitation at the plant workers' council level. In June the ILO again criticized the 30-worker minimum and called for the Government to take the necessary measures to amend its labor code. In its 2002 Annual Survey of Violations of Trade Union Rights, the ICFTU reported that 60 percent of the enterprises in the country employed fewer than 30 workers, with approximately 1 million workers excluded from organizing a union. Although the Congress debated additional labor reforms, labor law remained in flux because the Constitutional Court ruled in 2001 that some recent labor legislation was unconstitutional (see Section 6.e.). The court's ruling nullified several articles that the Government stated provided flexibility to employers but that some observers claimed undercut constitutional protections of worker rights.

Some companies have taken advantage of the law that prohibits unions from organizing at companies that have less than 30 employees by sub-contracting with several shell companies, each of which has less than 30 workers. Under the Labor Code, these subcontracted workers have no legal right to freedom of association or right to bargain collectively with the companies that ultimately benefit from their labor, nor do they have legal protection against anti-union discrimination.

Labor laws intended to protect workers' rights to freedom of association and to form and join trade unions are inadequate and failed to deter employers from retaliating against workers for organizing. Neither the Constitution nor the Labor Code requires reinstatement of workers fired for union activity. The Government's failure to enforce its labor laws and its lack of sufficient legal protection for workers' rights allowed employers to violate workers' rights with impunity.

While employees of state-owned organizations enjoy rights similar to those in the private sector, the law technically prevents the majority of public sector employees from joining unions or exercising collective bargaining rights. However, most public employees maintained membership in some labor organization.

Under the law, unions may form freely (if the company has the requisite 30 employees) and join federations or confederations, and three of the large labor centrals maintained international affiliations.

The Labor Code provides for resolution of labor conflicts through an arbitration and conciliation board that consists of one representative of the Ministry of Labor, two from the union, and two from management.

### b. The Right to Organize and Bargain Collectively

The labor market is highly segmented, with a minority of workers in skilled, usually unionized, positions in state-run enterprises or in medium-to-large industries. Approximately 12 percent of the work force was organized. Most of the economically active population was employed in the agricultural sector or the urban informal sector; the vast majority of these workers were not organized.

Although the labor confederations were politically independent, the two largest single labor unions, the National Union of Educators (UNE) and the Union of Social Security Workers, were allied with the Democratic Political Movement, a communist party. There are five large labor confederations or centrals; no central was connected firmly to any one political party, and there were no ties between the Government and any labor union.

The Labor Code requires that all private employers with 30 or more workers belonging to a union must negotiate collectively when the union so requests. Collective bargaining agreements covered only one-quarter of the approximately 12 percent of the work force that is organized. A 2000 labor law allowed businesses to hire workers on "individual contracts," but the practice has not become prevalent because Congress began a review of the law and has not clarified its status.

The Labor Code streamlined the bargaining process in state enterprises by requiring workers to be represented by only one labor union. It prohibits discrimination against unions and requires that employers provide space for union activities upon the union's request. If the Ministry of Labor rules that a dismissal of an employee is unjustified, it can require the employer to pay indemnities or separation payments to the worker of 125 percent of a month's salary for each year worked, although the reforms set a cap on such payments. These payments were relatively low for workers earning the minimum wage (i.e., payments of \$400 or less), and the law does not require reinstatement of workers fired for anti-union activity. Workers generally were

protected against antiunion discrimination only by pressure from the union. The ILO Committee of Experts found that the imposition of a fine "provided for by law in all cases of unjustified dismissal, when the real motive is...trade union membership or activity" is an inadequate protection against anti-union discrimination.

Employees also worked on temporary contracts, especially in the agricultural sector. While the Labor Code establishes a cap of 180 consecutive days for each contract, it does not prohibit the use of consecutive 180-day contracts. Some "temporary" workers may work for the same company (often for different sub-contractors of the same company) for an extended period of time under a series of short-term contracts. In practice it was difficult to organize temporary employees on short-term contracts. Since the Labor Code does not recognize temporary workers, they do not enjoy the same level of protection offered to other workers.

There are few restrictions on the right of workers to strike, although a 10-day cooling-off period is required before a strike can be declared. The Labor Code limits solidarity strikes or boycotts to 3 days, provided that the Labor Ministry approves them. In some industries, during a legal strike, workers may take possession of the factory or workplace (thus ending production at the site) and receive police protection during the takeover. However, in other industries, such as agriculture, the law requires a 20-day waiting period from the day the strike is called. During this time, workers and employers must agree on how many workers are needed to ensure a minimum service, and at least 20 percent of the workforce must continue to work in order to provide essential services. The Labor Code provides that "the employer may contract substitute personnel" only when striking workers refuse to send the number of workers to provide the minimum necessary services. The law does not explicitly prohibit the hiring of strikebreakers by subcontractors or other third parties that are not legally the striking workers' employer; however, the Labor Code prohibits an employer from contracting substitute workers during a strike, although in practice this law was not enforced. The employer must pay all salaries and benefits during a legal strike; the Labor Code protects strikers and their leaders from retaliation. The law does not provide public workers with the right to strike and includes a provision that striking public sector workers are liable to between 2 and 5 years in prison; however, there were frequent "illegal" strikes. The Government occasionally took action against striking public workers and, during the year, ordered striking public health workers back to work.

There were several significant strikes during the year. On May 6, workers at the Los Alamos banana plantation, owned by presidential candidate Alvaro Noboa, went on strike to protest poor working conditions. On May 16, between 200 and 400 men attacked the striking workers. Several workers were injured and one worker had his leg amputated as the result of a gunshot wound. The police arrested 16 of the attackers, but they were released on habeas corpus. However, the prosecutor's investigation did not address the primary claims made by the workers that they were threatened at gunpoint and that several were wounded by the attackers. In October the prosecutor charged the 16 individuals (who claimed to be plantation guards) with misuse of firearms and wounding of a police officer. Labor arbitration panels ruled against the strikers on the grounds that they had not met legal requirements for a strike, and in October the Superior Arbitration Panels rejected the workers' appeal.

Public health workers, including doctors and nurses, went on strike in February and July to demand higher wages and better working conditions.

The 1990 Maquila Law permits the hiring of temporary workers for the maquila (in-bond processing for export) industries. The maquila system allows a company and its property to become an export-processing zone wherever it is located. There were no unions or labor associations in the maquilas. Most workers were hired on temporary contracts by the employer to complete a specific order. Many such "zones" have been established; most were relatively small and were dedicated to textiles and fish processing.

#### c. Prohibition of Forced or Bonded Labor

The Constitution and the Labor Code prohibit forced or bonded labor, including by children, and there were no reports of it in general; however, there were reports of children forced into prostitution (see Section 5)

#### d. Status of Child Labor Practices and Minimum Age for Employment

In December President Noboa signed a new law on minors that includes a section on child labor. The new law raises the minimum working age for minors from 14 to 15, for all types of labor. It also reduces the maximum hours a minor may work to 6 hours per day, and 5 days a week. The law prohibits minors from working in hazardous conditions, including in mines, with toxic or dangerous substances, or with dangerous machinery. Employers are required to pay minors at least 80 percent of the wages received by adults for the same type of employment. The law also increases the penalties for illegal child labor. The parents or guardians can be fined \$50 to \$300 and the employers \$200 to \$1,000 for participating in child labor. In cases of repeated infractions the employer's business can be closed.

The Government formed the National Committee for the Progressive Eradication of Child Labor in 1997 –with a membership including government agencies, and business and labor organizations –charged with formulating a national plan for the eradication of child labor. During the year, the Committee worked with the ILO's International Program on the Elimination of Child Labor to conduct several industry specific studies on child labor.

In practice the Ministry of Labor and the Minors' Tribunals fail to enforce child labor laws, and child labor is prevalent. Despite the economic recovery over the past 3 years, the situation has not improved substantially, in part due to the emigration abroad of many parents who have left their children behind. Urban child labor has increased with the migration of the rural poor to the cities. A 2000 UNICEF report estimated that almost half of the children between the ages of 10 and 17 worked. The National Statistics Institute (INEC) reported that in 2001 over 130,000 children 14 years old or younger worked. A separate INEC study in 2001 reported that 455,000 children under the age of 15 worked.

In rural areas, young children often must leave school at an early age to help out on the family's plot of land. More than 60 percent of all children live in rural areas and did unpaid agricultural work for their families. In April Human Rights Watch published a report of the labor conditions on banana plantations. The 45 children interviewed for the report described working long hours on the plantations in dangerous conditions and without the proper safety equipment for the pesticides that are used on the plantations. The Ministry of Labor did not devote adequate resources to investigate exploitative child labor practices.

The Ministry of Labor has designated a "Social Service Directorate" to monitor and control child labor in formal sector businesses such as factories. In some instances the Directorate applied sanctions, but in other cases, it merely helped to provide documents to child workers. In urban areas, many children under 12 years of age worked in family-owned "businesses" in the informal sector, shining shoes, collecting and recycling garbage, or as street peddlers. Other children were employed in commerce, messenger services, domestic service, and begging. Children as young as 5 or 6 years often sold newspapers or candy on the street to support themselves or to augment family income.

#### e. Acceptable Conditions of Work

The Ministry of Labor periodically sets the minimum wage in consultation with the Commission on Salaries, but Congress also may adjust it. As of September, the minimum wage plus mandated bonuses provided a gross monthly compensation of approximately \$138 or 85 cents per hour in the case of contract workers. The statutory minimum wage is not adequate to provide a decent standard of living for a worker and family. Most organized workers in state industries and formal sector private enterprises earned substantially more than the minimum wage and also received other significant benefits through collective bargaining agreements. However, the majority of workers worked in the large informal and rural sector without recourse to the minimum wage or to legally mandated benefits.

The Ministry of Labor did not deploy sufficient resources to enforce labor laws. The Labor Code provides for a 40-hour workweek, a 15-day annual vacation, a minimum wage, and other employer-provided benefits, such as uniforms and training opportunities. In 2000, reforms to the labor law gave nominally greater flexibility to employers for hiring part-time workers; however, this legislation was affected by a Constitutional Court decision related to workers' retirement benefits. The impact of the Court's decision remained to be clarified at year's end (see Section 6.a.).

The Labor Code also provides general protection for workers' health and safety on the job. However, a worker may not leave the workplace for health reasons, even if there is a hazardous situation. The worker is allowed to request that an inspector from the Ministry of Labor come to the workplace and confirm the hazard; that inspector then may close down the workplace. Response time for inspectors ranged from a few days in major cities to much longer in the countryside.

The Social Security Institute enforces health and safety standards and regulations. In the formal sector, occupational health and safety was not a significant problem. However, there were no specific regulations governing health and safety standards in the agricultural sector and in practice there was no enforcement of safety rules in the small mines that make up the vast majority of the mining sector.

#### f. Trafficking in Persons

A misdemeanor law specifically addresses trafficking in persons, and other laws could be used to prosecute traffickers; however, no one has yet been convicted under the trafficking laws, and there were reports that Ecuadorians were trafficked out of the country.

A misdemeanor law specifically prohibits trafficking and provides for penalties from 6 months to 3 years in prison, as well as fines. The Migration Law and the Penal Code provide for the imposition of sanctions on suppliers of false documents for purposes of travel or work. Other laws dealing with kidnaping, labor, occupational safety, and slavery apply to and provide sanctions for trafficking in persons. In 2000 Congress amended the Criminal Code to strengthen sentences for furnishing or utilizing false documents and for alien smuggling. Alien smugglers or traffickers can receive sentences from 3 to 6 years' imprisonment; the penalties range from 6 to 9 years if victims are injured, and a penalty of up to 12 years may be imposed if a death occurs. The law specifically exempts smuggling victims from prosecution. At year's end, no case had yet reached a verdict under the trafficking laws.

There were reports of prostitution by girls and boys under 18 years of age in urban areas, and there were reports of cases in which children were forced into prostitution (see Section 5). No specific cases of trafficking were publicized during the year; however, human rights organizations suspected that trafficking occurred. In past years, Ecuadorian trafficking victims had been identified in Spain, Guatemala, Uruguay, Venezuela, and the United Kingdom. Although there were credible allegations that some government officials were involved in alien smuggling, there was no evidence that such officials facilitated or condoned

trafficking in persons.

Since the beginning of its economic crisis in 1999, the country has had a high rate of emigration: Up to 800,000 persons (or 7 percent of the population) were estimated to have emigrated since 1998, primarily to the United States and Spain, most of them illegally. Illegal emigrants paid between \$8,000 and \$12,000 per person to criminal organizations to be taken to the United States, usually through Central America. Due to the extreme poverty of most of the emigrants, and the high cost of such trips, some emigrants were vulnerable to traffickers.